

DRAFT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ralph Michel
Vice President
Omega Engineering, Inc.
One Omega Drive
Stamford, Connecticut 06906

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has reason to believe that Ralph Michel (Michel), Vice President of Omega Engineering, Incorporated (Omega), has committed six violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979 (the “Act”). Specifically, BIS charges that Michel committed the following violations:

Charges 1-4 (15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Export of Laboratory Equipment In Violation of an Order Issued Under the EAR)

Michel made or caused to be made a series of exports of laboratory equipment, including shipments on or about June 25, 1997, July 3, 1997, July 11, 1997, and July 16, 1997, that were routed from Omega in the United States to Pakistan via Newport Electronics GmbH (Newport) in Germany. This laboratory equipment included load cells, load bolts, strain gauges and related parts. By that means, Michel conducted or caused to be conducted the same export transaction for which the Department of Commerce had denied authorization in response to an export license

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The current version of the Regulations govern the procedural aspects of this case. The violations charged occurred in 1997. The Regulations governing the violations at issue are found in the 1997 through 2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1997)). The Regulations were issued pursuant to the Export Administration Act of 1979 (“Act”), 50 U.S.C. app. §§ 2401-2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 *Fed. Reg.* 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.

application previously submitted by Omega. On or about April 9, 1997, the Department of Commerce denied export license application Z097230, which Omega had submitted for the export of certain laboratory equipment, from the United States to Pakistan. Omega appealed this denial pursuant to Section 756.2 of the Regulations. On or about May 5, 1997, the Under Secretary of Commerce for Export Administration sustained the denial of the license application. In his letter of that date, which advised Omega and Michel of his decision pursuant to Section 756.2(c)(1), the Under Secretary set out the determinations that a license was required for this export and that Omega's application for such a license had been properly denied. Under Section 756.2(c)(2), this decision of the Under Secretary was final. In making or causing to be made the shipments on the dates specified above, Michel engaged in conduct prohibited by or contrary to the denial of export license application Z097230 and the Under Secretary's upholding of that denial, thereby committing four violations of Section 764.2(a) of the Regulations.

Charge 5 (15 C.F.R. § 764.2(e) - Acting with Knowledge of a Violation)

In making or causing to be made the above-described exports, Michel acted with knowledge that such exports were prohibited by or contrary to the Department of Commerce's denial of Omega's export license application and the Under Secretary's sustaining of that denial, as described in Charges 1-4 above. By selling and transferring the items described in Charges 1-4 above with knowledge that such violation was about to occur and was intended to occur in connection with the items, Michel violated Section 764.2(e) of the Regulations.

Charge 6 (15 C.F.R. § 764.2(b) - Causing a Violation - False Statements on Shipper's Export Declarations)

On or about June 25, July 3, July 11, and July 16, 1997, and in connection with each of the shipments described in Charges 1-4 above, Omega, through an employee, submitted or caused to be submitted a Shipper's Export Declaration (SED). Ralph Michel knew that items ultimately destined for Pakistan were included in such shipments to Newport in Germany, and then were to be shipped from Germany to Pakistan. Each such SED falsely identified Newport as the ultimate consignee and Germany as the country of ultimate destination. It also stated that the export qualified for export pursuant to "NLR" (no license required), when in fact a license was required for this export, as the Department of Commerce had previously advised Omega. Michel knew of the applicable license requirement and of the actual ultimate destination and ultimate consignee, but caused, induced, and permitted the submission of the SED's containing these false statements. By so doing, Michel violated Section 764.2(b) of the Regulations.

Accordingly, Michel is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;²

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Michel fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7.) If Michel defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Michel. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

Michel is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. (Regulations, Section 766.6.) Michel is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. (Regulations, Sections 766.3(a) and 766.4.)

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18.) Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Michel's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Michel's answer must be served on BIS at the following address:

² See the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. § 2461, note (2000)) and 15 C.F.R. § 6.4(a)(2).

Ralph Michel
Charging Letter
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DRAFT

Chief Counsel for Industry and Security
Attention: Philip D. Golrick
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Philip D. Golrick is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
RALPH MICHEL,)
Vice President,)
Omega Engineering, Inc.)
One Omega Drive)
Stamford, Connecticut 06907)
)
Respondent.)
)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Ralph Michel, and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2002)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² and

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The current version of the Regulations govern the procedural aspects of this case. The charged violations occurred in 1997. The Regulations governing the charged violations are found in the 1997 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1997)).

² From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 *Fed. Reg.* 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

which are currently maintained in force under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000)).

WHEREAS, BIS has notified Ralph Michel of its intention to initiate an administrative proceeding against him, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Ralph Michel that alleged that Ralph Michel committed six violations of the Regulations, specifically:

1. *Four Violations of § 764.2(a): Prohibited Conduct:* Ralph Michel made or caused to be made a series of exports of laboratory equipment, including shipments on or about June 25, 1997, July 3, 1997, July 11, 1997, and July 16, 1997, that were routed from Omega Engineering, Inc. (Omega) in the United States to Pakistan via Newport Electronics GmbH (Newport) in Germany. This laboratory equipment included load cells, load bolts, strain gauges and related parts. By that means, Ralph Michel conducted or caused to be conducted the same export transaction for which the Department of Commerce had denied authorization in response to an export license application previously submitted by Omega. On or about April 9, 1997, the Department of Commerce denied export license application Z097230, which Omega had submitted for the export of certain laboratory equipment from the United States to Pakistan. Omega appealed this denial pursuant to Section 756.2 of the Regulations. On or about May 5, 1997, the Under Secretary of Commerce for Export Administration sustained the denial of the license application. In making or causing to be made the shipments on the dates specified

above, Ralph Michel engaged in conduct prohibited by or contrary to the denial of export license application Z097230 and the Under Secretary's upholding of that denial, thereby committing four violations of Section 764.2(a) of the Regulations.

2. *One Violation of 15 C.F.R. §764.2(e): Acting With Knowledge of a Violation:* In making or causing to be made the above-described exports, Ralph Michel acted with knowledge that such exports were prohibited by or contrary to the Department of Commerce's denial of Omega's export license application and the Under Secretary's sustaining of that denial, as described above. By selling and transferring the items described above with knowledge that such violation was about to occur and was intended to occur in connection with the items, Ralph Michel violated Section 764.2(e) of the Regulations.
3. *One Violation of 15 C.F.R. § 764.2(b): Causing False Statement Violations:* On or about June 25, July 3, July 11, and July 16, 1997, and in connection with each of the shipments described above, Omega, through an employee, submitted or caused to be submitted a Shipper's Export Declaration (SED). Ralph Michel knew that items ultimately destined for Pakistan were included in such shipments to Newport in Germany, and then were to be shipped from Germany to Pakistan. Each such SED falsely identified Newport as the ultimate consignee and Germany as the country of ultimate destination. It also stated that the export qualified for export pursuant to "NLR" (no license required), when in fact a license was required for this export, as the Department of Commerce had previously advised

Omega. Ralph Michel knew of the applicable license requirement and of the actual ultimate destination and ultimate consignee, but caused, induced, and permitted the submission of the SED's containing these false statements. By so doing, Ralph Michel violated Section 764.2(b) of the Regulations.

WHEREAS, Ralph Michel has reviewed the proposed charging letter and is aware of the allegations made against him and the administrative sanctions which could be imposed against him if the allegations are found to be true;

WHEREAS, Ralph Michel fully understands the terms of this Agreement and the Order of the Assistant Secretary of Commerce for Export Enforcement to be issued to give effect to this Agreement (the "Order");

WHEREAS, Ralph Michel enters into this Agreement voluntarily and with full knowledge of his rights;

WHEREAS, Ralph Michel states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

WHEREAS, Ralph Michel neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Ralph Michel wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Ralph Michel agrees to be bound by the Order, when entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Ralph Michel, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. BIS and Ralph Michel agree that the following sanctions shall be imposed against Ralph Michel in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

- a. Ralph Michel, and when acting for or on behalf of him, his representatives, agents, assigns or employees (“Denied Persons”) may not, for a period of five years from the date of entry of the Order, participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) that is subject to the Regulations and that is exported or to be exported from the United States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan, including, but not limited to:
 - i. Applying for, obtaining, or using any license, License Exception, or export control document that involves export to Pakistan;
 - ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan; or

- iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to Pakistan that is subject to the Regulations, or in any other activity subject to the Regulations that involves Pakistan.

3. Ralph Michel agrees that, subject to the approval of this Agreement pursuant to paragraph 8 hereof, he hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; and (b) seek judicial review or otherwise contest the validity of this Agreement or the Order, when entered.

4. Upon entry of the Order, BIS will not initiate any further administrative proceeding against Ralph Michel in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. Ralph Michel understands that BIS will make the proposed charging letter, this Agreement, and the Order, when entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

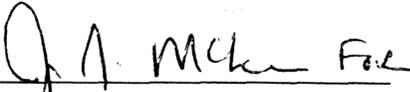
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, when entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

RALPH MICHEL



Mark Menefee
Office of Export Enforcement



Ralph Michel

Date: 5/6/03

Date: April 29, 2003

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
RALPH MICHEL,)
Vice President,)
Omega Engineering, Inc.)
One Omega Drive)
Stamford, Connecticut 06907)
)
Respondent.)

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), having notified Ralph Michel of its intention to initiate an administrative proceeding against him pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) (“Regulations”),² based on allegations in a proposed charging

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² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The current version of the Regulations govern the procedural aspects of this case. The charged violations occurred in 1997. The Regulations governing the charged violations are found in the 1997 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1997)).

letter issued to Ralph Michel that alleged that Ralph Michel committed six violations of the Regulations. Specifically, the charges are:

1. *Four Violations of § 764.2(a): Prohibited Conduct:* Ralph Michel made or caused to be made a series of exports of laboratory equipment, including shipments on or about June 25, 1997, July 3, 1997, July 11, 1997, and July 16, 1997, that were routed from Omega Engineering, Inc. (Omega) in the United States to Pakistan via Newport Electronics GmbH (Newport) in Germany. This laboratory equipment included load cells, load bolts, strain gauges and related parts. By that means, Ralph Michel conducted or caused to be conducted the same export transaction for which the Department of Commerce had denied authorization in response to an export license application previously submitted by Omega. On or about April 9, 1997, the Department of Commerce denied export license application Z097230, which Omega had submitted for the export of certain laboratory equipment from the United States to Pakistan. Omega appealed this denial pursuant to Section 756.2 of the Regulations. On or about May 5, 1997, the Under Secretary of Commerce for Export Administration sustained the denial of the license application. In making or causing to be made the shipments on the dates specified above, Ralph Michel engaged in conduct prohibited by or contrary to the denial of export license application Z097230 and the Under Secretary's upholding of that denial, thereby committing four violations of Section 764.2(a) of the Regulations.

2. *One Violation of 15 C.F.R. §764.2(e): Acting With Knowledge of a Violation:* In making or causing to be made the above-described exports, Ralph Michel acted with knowledge that such exports were prohibited by or contrary to the Department of Commerce's denial of Omega's export license application and the Under Secretary's sustaining of that denial, as described above. By selling and transferring the items described above with knowledge that such violation was about to occur and was intended to occur in connection with the items, Ralph Michel violated Section 764.2(e) of the Regulations.
3. *One Violation of 15 C.F.R. § 764.2(b): Causing False Statement Violations:* On or about June 25, July 3, July 11, and July 16, 1997, and in connection with each of the shipments described above, Omega, through an employee, submitted or caused to be submitted a Shipper's Export Declaration (SED). Ralph Michel knew that items ultimately destined for Pakistan were included in such shipments to Newport in Germany, and then were to be shipped from Germany to Pakistan. Each such SED falsely identified Newport as the ultimate consignee and Germany as the country of ultimate destination. It also stated that the export qualified for export pursuant to "NLR" (no license required), when in fact a license was required for this export, as the Department of Commerce had previously advised Omega. Ralph Michel knew of the applicable license requirement and of the actual ultimate destination and ultimate consignee, but caused, induced, and

permitted the submission of the SED's containing these false statements. By so doing, Ralph Michel violated Section 764.2(b) of the Regulations.

BIS and Ralph Michel having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that for a period of five years from the date of this Order, Ralph Michel, and when acting for or on behalf of him, his representatives, agents, assigns or employees ("Denied Persons") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") that is subject to the Regulations and that is exported or to be exported from the United States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document that involves export to Pakistan;
 - B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan;
- or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to Pakistan that is subject to the Regulations, or in any other activity subject to the Regulations that involves Pakistan.

SECOND, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations to Pakistan;
- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to Pakistan, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States to Pakistan;
- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to Pakistan; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to Pakistan and that is owned, possessed or controlled by a Denied Person, or service any item, of whatever

origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to Pakistan. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Ralph Michel by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


Julie L. Myers
Assistant Secretary of Commerce
for Export Enforcement

Entered this 12th day of November 2003.